

**AB 900 Phase II Jail Construction Financing Program
Corrections Standards Authority
Request for Applications – Issued October 7, 2011
Questions and Answers from the Bidders' Conference
October 19, 2011
West Sacramento, CA**

The following is a list of questions from the Bidders' Conference that was held in response to the Corrections Standards Authority's (CSA) release of the Request for Applications – Construction or Expansion of County Jails, October 7, 2011. In some cases clarification has been subsequently added to the question and/or response. Any additional questions regarding the Request for Applications (RFA) process may be directed at any time to CSA staff (contact information is located on page 6 of the RFA document).

If a county relinquishes its Phase I award, will the funding be returned to the same county size set-aside in Phase II?

As stated in the RFA, it is intended that relinquished Phase I award amounts from counties seeking the relinquishing preference will be returned to the same county in a Phase II award, once the legislative process is complete. This process will involve shifting the funding authority amount relative to that county, from Phase I to Phase II. The CSA Board has not contemplated up to this point what action it will take relative to Phase I awards that are relinquished and not tied to the relinquishing preference.

Counties relinquishing their Phase I award and reapplying in Phase II seeking the relinquishing preference, are advised in the RFA that they may add up to four months to their project timeline to allow for the requisite legislative shifting of funding authority from Phase I to Phase II. Since it is unknown whether the four months will be adequate, will the CSA Board automatically grant extensions to these counties if the legislative process takes longer than anticipated?

If the four months is not enough time for the legislative process, the CSA Board will be provided an update on the legislative progress and will have the opportunity to acknowledge the need for additional time on the project(s) timeline.

If a needs assessment was previously completed in 2008, what form of edits are necessary to utilize that same document with our Phase II submittal, and in what form should the edits be submitted?

It is the county's determination as to how current the 2008 needs assessment may be, and likewise the county would be responsible for updating any outdated portions, along with ensuring the needs assessment supports the project that is being submitted for funding. The form the edits take should be somewhat similar to the needs assessment, albeit a shorter document. It may mean the county would need to submit the older needs assessment, along with the updated portion, to make a complete needs assessment submittal that would meet the requirements of Title 24, California Code of Regulations.

Would a jail needs assessment be considered updated if it contained data for the year 2010 (considering that we are in the year 2011)?

Depending on the county's proposed project, it is possible data from the year 2010 will support the project need. Counties should take into consideration any current population or other changes that may affect project need as well.

The application requires that all data sources must be identified. Would it be appropriate to cite the needs assessment or should we cite the original source of information?

You may cite your needs assessment. The needs assessment would have the source documentation.

Can counties use dollars that were spent as part of their master plan for the entire building of the site based on the certified Environmental Impact Report (EIR)? This would be for master plan activities that our county had started back with AB 900 Phase I.

Yes, counties can include master planning with their needs assessment costs when there is a direct tie-in to the jail project for AB 900 Phase II.

The RFA indicates that only those counties which submit an Interest Statement are eligible to submit a subsequent application, if invited to do so. At the October 6, 2011 CSA Board meeting, indications from the Board were that any county could apply. If a county that is not invited to apply submits an application regardless, will the application be evaluated?

On October 6, 2011 the CSA Board approved the RFA. As a result of county inquiries prior to the Board meeting, it was discussed at the time of the meeting that any county could technically submit an application. It was further stated that certain counties were not eligible to receive an award from Phase II based on the current criteria of the RFA. If a county submits an application even though they are not an invited applicant, the application will not be reviewed and evaluated by the Executive Steering Committee (ESC) initially. If the application meets the requirements of the RFA, it may be reviewed at a later point if additional applications are needed in the process.

Pages 35 – 36 of the RFA display an overlay and timetable of the State Public Works Board (SPWB) and CSA processes and requirements, and also detail certain required timeframes in which particular activities must be accomplished in a design-bid-build construction project. Does CSA have something similar for design-build projects?

While the majority of projects tend to include the design-bid-build process, a similar layout is currently not available for design-build. The RFA, including the application form, contain information and requirements for the design-build process, as does the Capital Outlay and State Public Works Board Guidelines booklet on the CSA website. Together these documents would serve to aid and not disadvantage any county considering the design-build process.

Regarding Phase I counties with awards whose projects are not moving forward at this time, what is CSA's expectation and plan for these counties?

It is anticipated the CSA Board will be reviewing the status of Phase I projects at a future Board meeting.

Is it CSA's intention to fund down the list of existing evaluated and ranked projects from this RFA process if and when additional funding becomes available, or does it plan to issue another RFA first?

If additional funding becomes available during this RFA process, the CSA Board will determine whether that funding authority will be used for eligible counties in this current process, or whether there will be an additional RFA process initiated. Timing and amount of additional funding authority would be some of the factors considered by the Board in making that determination.

If there is funding remaining in any given county size category, with yet unfunded projects in another county size category, can that remaining funding authority be shifted to meet the unmet needs in another category?

The CSA Board has the authority to shift funding from one county size category to another, as may be deemed appropriate by the Board.

Will it require a legislative change to fund a second AB 900 award to a county that has already received a \$100 million award in Phase I and is not relinquishing that award in order to participate in Phase II?

No, this would not require a legislative change as the \$100 million county cap on Phases I and II combined is set by CSA Board policy for the Phase II RFA released October 7, 2011. This is the same for the other county-size cap amounts for medium (\$80 million) and small (\$33 million) counties.

The RFA references that the ESC will review and assess applications for "worthiness" on a pass/fail basis. In the past CSA has developed rating/scoring criteria in an attempt to ensure consistent evaluation of applications by the ESC evaluators. Are there specific criterion in writing?

The criterion the ESC will use to assess each application will be similar to past practice in that the application form, and the specifics to which it requests that counties respond, will be used by the ESC as the factors that will be assessed. With the legislative preferences and hard preference approach, the evaluators will use a pass/fail assessment as opposed to a point scale. As is past practice, CSA's research and evaluation experts will work with the ESC before they begin reviewing the applications, training them for standardization of project evaluation based on the criterion stated in the application form.

With respect to the budget summary table on Page 4 of the application, can the county list only those items that help the county achieve their 10 percent minimum match requirement? Would that weigh against us when the applications are assessed by the ESC?

In past CSA processes the match amount was weighted with points. That is not the case in this application process. We suggest that counties limit the match amount to the 10 percent that is required.

With this said, there will be other project costs incurred by counties outside of the required match amount. Those additional costs will need to be disclosed after award and will be reviewed for their source of funding in order to ensure compatibility with the lease-revenue bond financing.

Does Phase II allow for replacing existing jail beds, so long as the county is also adding beds? Is there a requirement related to a minimum number of beds to be built?

Replacing existing jail beds through the new construction of added jail beds is an acceptable Phase II project, without regard to a net gain calculation. There is no minimum number of beds to be built, nor minimum project size.

Is it necessary to have a net gain in beds, or are replacement beds acceptable in Phase II, without a resulting net gain?

A net gain in beds is not necessary in Phase II, yet each project must include beds.

In the application form, Section 3, on the right hand side of the project timetable, there are a series of comment fields. Is there anything that CSA is looking for in particular?

The "Comments" column was provided in the event that applicants wish to provide narrative. There is no requirement to add any particular information.

The RFA states that counties are responsible to staff and operate the facility within 90 days after construction completion. Is it the expectation that all of the beds are filled within 90 days, or that counties have begun the operation and staffing of the facility?

It is not expected that the county will fill the facility on the day it opens, but that the entire facility is ready to be operational as needed.

The RFA states that ancillary space included in the financed project must be reasonable and necessary for facility operations. In our particular case, there are certain areas that we need to build but not all of that space will be fully utilized initially. This AB 900 project is the first phase of a master plan for this site.

As determined by the ESC, counties can build to projections of 2018 in terms of meeting their needs. CSA staff can work with the county on county-specific project needs as it relates to the Phase II application and planning for the future.

The project timetable in the application requires both site acquisition and commencement of the California Environmental Quality Act (CEQA) environmental review to occur within 90 days of award. CEQA review can commence within 90 days, but in this case the county is planning to exercise options for site acquisition, a governmental action that should only occur subsequent to completion of the environmental review. Environmental review for our proposed site is scheduled to be

completed in two years, in mid-2013. Is it acceptable for site assurance acquisition to occur in 2014?

A two or three year delay in getting a project site would make the county ineligible under this process. Given the need for jail beds in California, the intent of providing the required timeframes for this process is to conditionally award counties that can proceed to construction in a timely manner.

Recognizing that counties are limited to building for bed needs to the year 2018 with financing from the AB 900 Phase II construction program, can the county build a larger project, knowing that the State would only match 90 percent of the AB 900 project?

There is potential for the county to be able to build a larger project. The specifics of the project, including its complete financing package, would need to be reviewed and approved by the State.

The county is considering a purchase option on a particular site. How does this work with the State's requirement for the county to have possession of a site within 90 days from award?

It is a CSA requirement that an awarded county must have fee simple ownership or comparable long term possession of a site within 90 days of award. If the county is unable to meet that requirement, the county's project would be back before the CSA Board for a review and potential action with regards to the county's Phase II award. This project review would be an opportunity for the county to provide a timeline for the CSA Board's consideration that would address any concerns about project delays.

Does the schedule in the RFA take into account any required plan approvals by State agencies?

Yes, it does consider review times by various state entities.

Related to the site assurance requirement, the county has a site that is currently encumbered, and the county is working to clear that encumbrance. At what point does that encumbrance have to be cleared?

The encumbrance would have to be cleared before the project could be established by the SPWB.

If, during the CEQA process, the county is forced to select a different site due to public opposition, is the county able to change sites, and how does this fit within the 90-day site assurance requirement?

If a county is unable to declare site ownership within 90 days following award, or needs to change sites, the project would be back before the CSA Board for review and determination as to the status of the award.

What is the timeframe for counties to receive reimbursements from the State for eligible project costs deemed reimbursable by the State?

Once a county submits a reimbursement request to CSA, payment is made to the county within approximately 30 to 60 days. Counties will have a choice as to the frequency at which they invoice the State for reimbursement – i.e., monthly, every two months or quarterly. Also, if a county is seeking reimbursement for design or construction management costs, those reimbursements will not be made until after the start of construction.

Does a county have to commit to the number of beds it intends to build?

The CSA competitive RFA process involves the review and assessment of county applications for requested state financing assistance on jail construction projects. Portions of that review involve assessing the project costs in relation to the project scope, which includes the number of beds the county intends to construct. The review outcome is for projects deemed worthy of State financing to be conditionally awarded by the CSA Board, within the limits of the available financing authority. Throughout the history of the CSA jail construction program, counties have had to be definitive regarding the number of beds included in their application that is being rated, and were held to that number. The contractual agreements are structured accordingly. Should a county find itself unable to follow through with the full project scope, the project would be back before the CSA Board for a review and determination on award status.

In the RFA, State Reimbursement, County Contribution (Matching Funds) and Other County Borne Project Cost Requirements section, there is a description of specified activities where the State may reimburse counties after the project has been established by the SPWB. Item 8 refers to moveable equipment. Does this include any and all items necessary for the operation of the detention facility, such as: office equipment; copy machines; record storage equipment; phone and fax machines; and furniture such as desks and chairs?

Yes.

Can state financing pay for a project's design or construction contingency?

Yes, State financing may be used for these contingencies.

Is public art eligible for reimbursement with state financing, or is it eligible as match only?

Public art is eligible as cash match only, as referenced on page 20 of the RFA.

Page 18 of the RFA states that on-site construction of the CSA-approved detention facility project, including site preparation, is eligible for state reimbursement. Does on-site construction include site work such as boundary walls that are both esthetic and provide perimeter management of the jail facility, any necessary fencing within the facility to separate appropriate areas, or a perimeter wall that is a requirement based on our EIR?

Yes, as long as the work is being done on the project site.

Page 20 of the RFA states that off-site costs, including access roads and utilities development, outside of a reasonable buffer zone surrounding the perimeter of the security fence, detention facility building and parking lot are eligible as cash match/contribution. Could this include access roads that include significant road work, including a new main entrance to the new jail facility, not necessarily required by this jail project, but is a county improvement to create a new thoroughfare?

This is an example of a project component that will need further review by State stakeholders before a determination can be made.

If the county builds to LEED standards, is that an eligible cost?

Yes, that is eligible as either state reimbursable costs or as match.

If the county hires one or more third parties to review the construction once complete, and it is done as part of the county's construction management plan, is that an eligible cost?

Yes, it is an eligible cost if performed under subcontract to the county's construction manager.

If relocating a dispatch center is necessitated by a project that includes the remodel of an existing facility, is that an eligible project cost, as either state reimbursement or match?

The cost of locating a dispatch center elsewhere is not an eligible cost, as it is not a jail function and therefore not included in this AB 900 jail construction program.

In the case of a new facility being built where the current facility exists, are the demolition costs associated with the existing facility eligible?

If those demolition costs are necessitated by the AB 900 construction project, then yes, they are eligible.

In the application form, Section 3, the project timetable lists all key events that follow the conditional award. Is the conditional award synonymous with the establishment of the project by the SPWB?

No. The conditional award by the CSA Board on March 8, 2012 (for most counties) is the start date for the timeline for purposes of this process. There are several activities that counties must accomplish after the conditional award, among them is having their project established by the SPWB within 12 months of the conditional award. In order to be reimbursed by the State for eligible project costs, including architectural design, the project would need to be established by SPWB. (Refer to the Capital Outlay and State Public Works Board Guidelines located on the CSA website for more detail.)

The RFA indicates that the State may reimburse counties for specified activities that occur after the project has been established by the SPWB. When does the project officially begin from the perspective of the State?

The State may reimburse counties for architectural programming and design and construction management only if the project has first been established by the SPWB. The reimbursement cannot occur until after the county has received approval from the State to award a contract to the construction contractor and issued a notice to proceed to the contractor. At that point the county can request reimbursement of the eligible state financed project costs accumulated to date. If the county does not enter into a contract with a construction contractor to construct the project, the county will not be reimbursed for the accumulated project costs.

If the county does not intend to be reimbursed for the costs for architectural design or construction management, then the county does not necessarily have to wait for the establishment of the project in order to begin the design process.

How far can a county go in terms of the architect selection process before the project must be established by the SPWB?

In the case of a county that is seeking state reimbursement for design activities, the county can begin the selection process for consultants but cannot enter into a contract or begin design activities under a contract until the project has been established by the SPWB. If no state reimbursement is being sought, the county may begin design activities before SPWB project establishment.

The RFA states that the SPWB will not be able to establish the scope, cost and schedule of a project until a county demonstrates to the State's satisfaction that county funds for contribution (match) requirements, as well as other county borne project costs, will be available as necessary for the timely completion of the project. How can counties show that they have met that requirement?

Counties can provide Board of Supervisors' meeting minutes for approval of the budget. This would include the line item and pages from within the budget that demonstrate the allocation of those funds.

If we are awarded AB 900 financing, will we be limited to a particular type of local financing that we could use as a county to finance the remainder of our project costs? Does that limit us on using our land as security because of the agreement we will have with the SPWB?

The State will examine the source of funds that the county provides for its match to ensure it is compatible with the lease-revenue bonds. In particular, the project site cannot be used as security for the local financing.

We currently have the authority from our Board of Supervisors to contract for design services for the project. We intend to request reimbursement by the State for the cost of design services. Is there any way to accelerate that SPWB process?

As it states in the RFA, the State may reimburse counties for architectural programming and design and construction management only if the project has first been established by the SPWB. The project timetable in the application indicates that in order to be eligible for this construction financing program, counties must have their project established by the SPWB within 12 months. The State stakeholders will do our best to match counties' progress as the

many required steps along the way are completed. (Refer to the Capital Outlay and State Public Works Board Guidelines on the CSA website for more detail.)

With regards to the construction duration, is there any latitude with the need to complete construction within three years of its commencement?

The three-year construction completion requirement is necessary; the basis of which is related to tax rules associated with the lease-revenue bonds.

If the county desired at a later date to construct additional housing units above and beyond the originally planned project, is that feasible?

It is possible, and would require approval following a review by the State stakeholders. Initial consideration by the State would be to verify that the added construction that is proposed would not jeopardize the structure and the footprint that is the security of the bonds on the AB 900 project.

If the county intends to add on to an AB 900 constructed facility at a future unknown date, should that intent be expressed in the county's application or at any other point in the process following conditional award?

If it is known the facility is likely to be expanded at a future point, that information should be shared upfront in the process. It can be mentioned in the application, and then further discussed as the county begins working with the various State agencies after conditional award, so that appropriate considerations can be given. There are other current AB 900 projects where accommodations have been made for this.

The RFA references both the design-bid-build and the design-build methods of construction. Are there other project delivery methods that can be utilized with this construction financing program?

Assembly Bill 1628 (which made amendments to AB 900) only specifically referenced the design-build method of construction as additionally allowable to what AB 900 already provides. Therefore, in a strict sense, there would appear to be limitations that allow for either the traditional design-bid-build or design-build. If any county wishes to demonstrate how their proposed construction delivery method falls within the parameters set in AB 900 or AB 1628, but is thought to be different than what is known as either of the two mentioned construction delivery methods, the State stakeholders will review for compatibility with this program.

We are currently designing and building a tunnel connecting our court facility (being built concurrently) to the south end of our jail. In this application process we are going to apply for financing to expand the north side of our jail. Due to the connecting tunnel and the expansion of the north side of our jail, would the footprint of the project include the existing facility? Could the construction cost of the tunnel be used as hard match?

More detail is needed, but it is possible by your description that the entire facility would need to be captured in the footprint, or that the project footprint would be described by two distinct areas. Depending on timing and project footprint, it is possible the tunnel could be included as an eligible project cost.

Are there any labor compliance program requirements imposed by the State in this program?

While this AB 900 jail construction financing does not have labor compliance program requirements specifically, any applicable laws or compliance program requirements – labor or otherwise, would apply. Specific to labor compliance, the Department of Industrial Relations requires counties to have a labor compliance program pursuant to Labor Code section 1771.3(a)(2).

Is a public/private financing venture allowable?

It is currently not an approved financing strategy for these AB 900 county jail projects; however, counties will be notified should that change.